LOO SAM MIN

v.

PENTADBIR TANAH DAERAH & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING MOTION NO. F 78/1985]
13 MARCH 1987

LAND LAW: *Temporary occupation licences - Expiry of - Not renewed - Squatter on State land - Whether has any legal or equitable right.*

The plaintiff sought a declaration that he was entitled to physical possession of the whole area as stated in three temporary occupation licences (TOL) which had been issued to him by the 1st defendant. He also sought for an order of *mandamus* against the 1st defendant directing him to remove the 2nd and 3rd defendants from occupying the areas that had been allotted to him.

The plaintiff had filed this originating motion on 2 December 1985 and as of that date, the three TOL had only another 29 days to run before their expiry on 31 December 1985, unless renewed by the 1st defendant.

The 1st defendant, however, did not renew the three licences and this decision not to renew was taken before the originating motion was filed but that no action was taken to enforce that decision in view of the present proceedings.

Held:

[1] As the TOL were nothing more than mere licences to occupy state land and when they were not renewed, the right to occupy reverts to the state. As the date of the hearing was on 12 January 1987, the plaintiff had no interest whatsoever in the land to protect or safeguard. The plaintiff's continued occupation of the land in question is that of a squatter or trespasser with no rights whatsoever, either in law or equity.

[2] Since the three TOL have not been renewed, the plaintiff clearly has no legal right to insist upon the 1st defendant. The five provisos contained in s. 44 of the Specific Relief Act 1950 are accumulative in effect and have not been satisfied by the plaintiff.

[Originating motion dismissed with costs.]

Cases referred to:
Papoo v. Veeriah [1965] 31 MLJ 127
Sidek bin Mohammad & 61 Ors. [1982] CLJ (Rep) 321
Koon Hoi Chow v. Pretam Singh [1972] 1 MLJ 180

Legislation referred to:
Rules of the High Court 1980, O. 53 r. 1(1)
Specific Relief Act 1950, s. 44

For the plaintiff - Anthony Fernandez; M/s. Anthony Fernandez & Partners
For the 1st defendant - Ahmad Fairuz bin Dato' Sheikh Abdul Halim, State Legal Adviser Selangor
For the 3rd defendant - Ramachandran; M/s. Rama & Co.

JUDGMENT

Siti Norma Yaakob J:

I had dismissed this originating motion with costs on the sole ground that the plaintiff had no *locus standi* to maintain these proceedings against the three defendants.

His case is founded on three temporary occupation licences (TOL) which had been issued to him by the first defendant. He claims that the first and second defendants had encroached into parts of the area over which he had the right to occupy by virtue of the three TOL and in this present proceedings, he seeks a declaration that he is entitled to physical occupation of the whole area as stated in the three TOL and for an order of *mandamus* against the first defendant directing him to remove the second and third defendants from occupying the areas that had been allotted to him.

The plaintiff had filed this originating motion on 2 December 1985 and as of that date, the three TOL had only another 29 days to run before their expiry on 31 December 1985, unless of course renewed by the first defendant. The first defendant, however, did not renew the three licences and the state legal adviser Selangor intimated to me that the decision not to renew was taken before the originating motion was filed but that no action had been taken to enforce that decision in view of this proceedings. Thus at the date of the hearing of this originating motion on 12 January 1987, the plaintiff had no interest whatsoever over the land to protect or safeguard. This is so as the TOL are nothing more than mere licences to occupy state land (see the case of *Papoo v. Veeriah* [1965] 31 MLJ 127) and when they were not renewed, the right to occupy reverts to the State. It would naturally follow that after 31 December 1985, the plaintiff's continued occupation of the land in question is that of a squatter or trespasser with no rights whatsoever, either in law or equity (see the case of *Sidek bin Mohammad & 61 Ors.* [1982] CLJ (Rep) 321).

I also need to mention that at the outset of the hearing, the plaintiff applied to amend prayer 2 of his originating motion which is a prayer for an order of *mandamus* against the first defendant by substituting it for an order under s. 44 of the Specific Relief Act 1950. The application for amendment became necessary when the plaintiff realized that he had not obtained leave under O. 53 r. 1(1).

The order under s. 44 of the Specific Relief Act 1950 has been described in the case of *Koon Hoi Chow v. Pretam Singh* [1972] 1 MLJ 180 as being in its nature "an order of *mandamus* which is a peremptory order of the Court commanding somebody to do that which it was his clear legal duty to do. The applicant seeking such an order must have a legal right to the performance of such duty by the person against whom the order is sought." In this case, since the three TOL have not been renewed, the plaintiff clearly has no legal right to insist upon the first defendant. In addition, on the facts of this case, I consider that the five provisos contained in s. 44 which are accumulative in effect have not been satisfied by the plaintiff. The issue is whether the plaintiff can bring himself within the purview of s. 44 but since he has no rights whatsoever over the land in question, no amount of amendments can confer any rights to him.

Also found at [1987] 2 CLJ 321